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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,339	01/28/2004	Shane Elwart	FGT 3C7 (81090700)	5227
36865 7590 08/28/2008 ALLEMAN HALL MCCOY RUSSELL & TUTTLE, LLP 806 S.W. BROADWAY, SUITE 600 PORTLAND, OR 97205				
EXAMINER				
JOHNSON, EDWARD M				
ART UNIT		PAPER NUMBER		
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MAIL DATE		DELIVERY MODE		
08/28/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte SHANE ELWART,  
GOPICHANDRA SURNILLA  
and  
JOSEPH R. THEIS

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Application 10/767,339  
Technology Center 1700

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Mailed: August 28, 2008

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Before DALE M. SHAW *Chief Appeals Administrator*.  
SHAW, *Chief Appeals Administrator*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received electronically at the Board of Patent Appeals and Interferences on March 24, 2008. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being electronically returned to the examiner. The matter requiring attention prior to docketing is identified below:

APPEAL BRIEF

A review of the Image File Wrapper (IFW) indicates that appellants filed an Appeal Brief on April 16, 2007 in response to the Order Returning Undocketed Appeal mailed April 2, 2007. However, the Appeal Brief does not fully comply with 37 CFR § 41.37(c) (2006) which states:

(c)(1) The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(i) through (c)(1)(x) of this section, except that a brief filed by an appellant who is not represented by a registered practitioner need only substantially comply with paragraphs (c)(1)(i) through (c)(1)(iv) and (c)(1)(vii) through (c)(1)(x) of this section:

....

(vii) *Argument*. The contentions of appellant with respect to each ground of rejection presented for review in paragraph (c)(1)(vi) of this section, and the basis therefor, with citations of the statutes, regulations, authorities, and parts of the record relied on. Any arguments or authorities not included in the brief or a reply brief filed pursuant to § 41.41 will be refused consideration by the Board, unless good cause is shown. Each ground of rejection must be treated under a separate heading. For each ground of rejection applying to two or more claims, the claims may be argued separately or as a group. When multiple claims subject to the same ground of rejection are argued as a group by appellant, the Board may select a single claim from the group of claims that are argued together to decide the appeal with respect to the group of claims as to the ground of rejection on the basis of the selected claim alone. Notwithstanding any other provision of this paragraph, the failure of appellant to separately argue claims which appellant has grouped together shall constitute a waiver of any

argument that the Board must consider the patentability of any grouped claim separately. Any claim argued separately should be placed under a subheading identifying the claim by number. Claims argued as a group should be placed under a subheading identifying the claims by number. A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim.

....

(d) If a brief is filed which does not comply with all the requirements of paragraph (c) of this section, appellant will be notified of the reasons for non-compliance and given a time period within which to file an amended brief. If appellant does not file an amended brief within the set time period, or files an amended brief which does not overcome all the reasons for non-compliance stated in the notification, the appeal will stand dismissed.

(e) The time periods set forth in this section are extendable under the provisions of § 1.136 of this title for patent applications and § 1.550(c) of this title for ex parte reexamination proceedings.

The “Argument” section appearing on pages 11-26 is deficient because each ground of rejection listed on page 10 of the “Grounds of Rejection to be Reviewed on Appeal” section must be treated under a separate heading.

Correction is required.

Accordingly, it is

ORDERED that the application is returned to the Examiner:

1) to hold the Appeal Brief filed April 16, 2007 defective;

2) for notification to appellants to file a substitute Appeal Brief in compliance with 37 CFR § 41.37(c)(I)(vii) which corrects the “Argument” section;

3) for consideration of the substitute Appeal Brief; and

4) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

DMS:psb

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